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January 25, 2019

VIA ECF

The Honorable P. Kevin Castel
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Cunningham v. Cornell University, No. 1:16-cv-06525-PKC (S.D.N.Y.)

Dear Judge Castel:

Defendants Cornell University, the Retirement Plan Oversight Committee (“RPOC”), and Mary G. Opperman (collectively, “Cornell Defendants”) respectfully submit this letter to request that this Court enter an order approving the provisional sealing of the filings and exhibits identified in Exhibit A, which have been submitted in support of the Cornell Defendants’ motion for summary judgment, motion to exclude Plaintiffs’ experts Wendy Dominguez and Gerald Buetow, and motion to exclude Plaintiffs’ experts Al Otto and Ty Minnich.

The Cornell Defendants do not seek to maintain any of this information under seal, but these filings contain information designated “Confidential” by other parties and third-party subpoena respondents who have indicated that they may wish to file a motion to maintain the materials under seal.

The Cornell Defendants therefore request that the filings and exhibits identified in Exhibit A be provisionally maintained under seal for a period of 14 days, to permit other interested parties an opportunity to file appropriate motions. The Cornell Defendants have filed these materials in redacted form. Unredacted copies of these materials have been served on each of the designating parties and courtesy copies of the same will be provided to the Court within 4 days in accordance with the Court’s Individual Practices § 3.E.

Respectfully submitted,

/s/ Samuel P. Myler

Exhibit A

Exhibits to the Declaration of Samuel P. Myler

1. Exhibit 23: Portions of the September 14, 2018 report of Defendants' expert Glenn A. Poehler redacted to preserve confidentiality of Mercer 403(b) clients, Fidelity recordkeeping clients, and Mr. Poehler's home address.
2. Exhibit 46: Excerpts from the Deposition of Plaintiffs' Expert Al Otto.
3. Exhibit 65: July 20, 2012 letter from TIAA to Fiona McLennan at Columbia University (CORNELL029338) is redacted to preserve confidential communications between Columbia University and TIAA regarding Columbia's defined contribution retirement program.
4. Exhibit 66: CAPTRUST Required Revenue Spreadsheet (CAPTR_0022939) is redacted to preserve the identity and plan fees of clients of CAPTRUST.
5. Exhibit 67: CAPTRUST TIAA Clients and Fees Spreadsheet dated May 2017 (CAPTR_0045957) is redacted to preserve the identity and plan fees of clients of CAPTRUST.
6. Exhibit 68: TIAA Top -200 Client Fee Data Spreadsheet (CORNELL029335) is redacted to preserve confidential information provided by third party TIAA.
7. Exhibit 71: "2017 Value Deck Prepared for Cornell University" by Fidelity (CORNELL029333) is redacted to preserve proprietary client information of third party Fidelity.
8. Exhibit 72: Excerpts from the Deposition of Plaintiffs' Expert Ty Minnich
9. Exhibit 106: The August 24, 2018 expert report of Plaintiffs' expert Wendy Dominguez has been redacted to preserve confidentiality of Ms. Dominguez's clients.
10. Exhibit 107: The August 24, 2018 expert report of Plaintiffs' expert Albert Otto has been withheld per agreement with Plaintiffs' counsel.
11. Exhibit 108: The August 24, 2018 expert report of Plaintiffs' expert Ty Minnich has been withheld per agreement with Plaintiffs' counsel.
12. Exhibit 109: Declaration of Erich Podzinski served September 17, 2018 is redacted to preserve proprietary information provided by third party TIAA.
13. Exhibit 112: Declaration of Douglas Chittenden dated January 25, 2019 redacted to preserve proprietary information provided by third party TIAA.

Exhibits to the Declaration of Brian D. Netter regarding Defendants' Motion to Exclude Plaintiffs' Experts Minnich and Otto

1. Exhibit A: Relevant excerpts of the October 3, 2018 deposition of Plaintiffs' expert Ty Minnich have been withheld per agreement with Plaintiffs' counsel.
2. Exhibit B: Relevant excerpts of the August 10, 2018 deposition of TIAA 30(b)(6) witness Adam Polacek have been withheld to preserve proprietary information of third party TIAA.
3. Exhibit D: The August 24, 2018 report of Plaintiffs' expert Albert Otto has been withheld per agreement with Plaintiffs' counsel.
4. Exhibit E: Relevant excerpts of the October 10, 2018 deposition of Plaintiffs' expert Albert Otto have been withheld per agreement with Plaintiffs' counsel.
5. Exhibit F: The August 24, 2018 report of Plaintiffs' expert Ty Minnich has been withheld per agreement with Plaintiffs' counsel.
6. Exhibit H: September 14, 2018 report of Defendants' expert Glenn Poehler has been withheld per agreement with Plaintiffs' counsel.

Exhibits to the Declaration of Brian D. Netter regarding Defendants' Motion to Exclude Plaintiffs' Experts Dominguez and Buetow

1. Exhibit A: Relevant excerpts of the October 16, 2018 deposition of Plaintiffs' expert Wendy Dominguez have been withheld per agreement with Plaintiffs' counsel.
2. Exhibit B: The August 24, 2018 report of Plaintiffs' expert Wendy Dominguez has been withheld per agreement with Plaintiffs' counsel.
3. Exhibit P: September 14, 2018 report of Defendants' expert Glenn Poehler has been withheld per agreement with Plaintiffs' counsel.
4. Exhibit R: The August 24, 2018 report of Plaintiffs' expert Dr. Gerald Buetow has been withheld per agreement with Plaintiffs' counsel.